

**IN THE CIRCUIT COURT OF CRAWFORD COUNTY, MISSOURI  
FORTY-SECOND JUDICIAL CIRCUIT**

<b>STATE OF MISSOURI, ex rel.</b>	)	
<b>JEREMIAH W. (JAY) NIXON,</b>	)	
<b>Attorney General,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No.</b>
	)	
	)	<b>Division No.</b>
<b>vs.</b>	)	
	)	
<b>AXS Marketing</b>	)	
<b>and OREN PINTO</b>	)	
<b>4102 Saint-Denis</b>	)	
<b>Montréal, Québec H2W 2M5</b>	)	
<b>Canada,</b>	)	
	)	
<i>Serve:</i>	)	
<b>Oren Pinto</b>	)	
<b>1510 Rue Saint-Jacques</b>	)	
<b>Montréal, Québec H3C 4J4</b>	)	
<b>Canada,</b>	)	
	)	
<b>Defendants.</b>	)	

**VERIFIED PETITION FOR INJUNCTIVE RELIEF,**  
**CIVIL PENALTIES AND OTHER RELIEF**

Plaintiff, the State of Missouri, pursuant to § 407.020 *et. seq.*, by and through its Attorney General Jeremiah W. (Jay) Nixon and his assistant, Jill C. LaHue, states in support of its verified petition as follows:

**PARTIES AND JURISDICTION**

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to §§ 407.020 and 407.100, RSMo 2000.

2. Upon information and belief, Defendant AXS Marketing (hereinafter, “AXS”), is a Canadian entity, registered in the Province of Québec as 9068-7641 Québec Inc., with its principal place of business at 4102 Saint-Denis, Montréal, Québec H2W 2M5, Canada. “Telguard” and “American Service” are names that AXS telemarketers use as business names when calling consumers. AXS also operates using the names of Telenetwork, Teleguard, and Phoneguard.

3. Defendant Oren Pinto is a natural person who lives in Canada. Upon information and belief, Pinto is the president and owner of AXS Marketing. His home address is 1510 Rue Saint-Jacques, Montréal, Québec, Canada.

4. This Court has subject matter jurisdiction over this matter pursuant to § 407.100, RSMo 2000, which allows the Attorney General to seek injunctive relief, restitution, and penalties in circuit court for violations of § 407.020, Missouri's Merchandising Practices Act.

5. This Court has personal jurisdiction over these Defendants pursuant to § 506.500.1, RSMo 2000, because, as is more fully set forth below, they have transacted business within the State of Missouri, have entered into contracts within the state, and/or have committed tortious acts within the state. Further, as is described more fully below, they have acted in concert with one another to purposefully direct activities at the residents of the state, and have availed themselves of this state by utilizing services and instrumentalities within the state to further the conduct alleged herein to be unlawful.

6. Venue is proper in this Court pursuant to § 407.100, RSMo 2000, and/or § 508.070, RSMo 2000, because acts which are alleged to violate § 407.020 occurred in Crawford County, Missouri.

### **ALLEGATIONS**

#### **The Missouri Merchandising Practices Act**

7. Section 407.020, RSMo 2000 provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

Section 407.100, RSMo 2000, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use,

practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, where the violation alleged to have been committed occurred, or where the defendant has his principal place of business.

8. Under Section 407.010(5), RSMo, person is defined to include "any natural person or his legal representative, partnership, firm, for profit or not for profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and

any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof."

9. "Advertisement" is defined by § 407.010(1) as "the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise."

10. "Merchandise" is defined by § 407.010(4) as "any objects, wares, goods, commodities, intangibles, real estate or services."

11. "Sale" is defined by § 407.010(6) as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit."

12. "Trade or Commerce" is defined by § 407.010(7) as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real personal, or mixed and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

13. 15 CSR 60-9.070 Misrepresentation in General provides:

- (1) A misrepresentation is an assertion that is not in accord with the facts  
....
- (2) Reliance, knowledge that the assertion is false or misleading, intent to defraud, intent that the consumer rely upon the assertion, or any other culpable mental state such as recklessness or negligence, are not elements of misrepresentation as used in section 407.020.1, RSMo.

14. 15 CSR 60-7.030 Omission of a Material Fact provides:

- (1) A seller shall not omit any material fact in an advertisement.

## **The Defendants' Practices**

15. Upon information and belief, Defendants are in the business of marketing services, for a fee, that include: alleged protection for consumers' credits cards, checking accounts, and other personal information; stopping telemarketing calls and "junk" mailings to consumers; and recovering alleged fraudulent charges to credit cards or checking accounts. Defendants promote their services through telemarketing.

16. At an exact date unknown, but at least since April 2002, Defendants, operating under the name of Telguard, have marketed and sold their services to Missouri consumers through telemarketing.

17. Defendants have engaged in the following practices when their Telguard callers contact Missouri consumers and offer to recover alleged fraudulent charges to consumers' accounts for a fee:

- a. The caller represents that he or she is from Telguard and that the consumer has received fraudulent charges to his or her checking or credit card account, and for a fee, Telguard could have the amount refunded. The callers quoted fees of \$379, \$398, and \$285 and gave little or no detail about the alleged fraudulent charges when asked. Most consumers, after reviewing their financial accounts, reported that they had not incurred unauthorized charges.
- b. In some cases, callers claimed to be working with the Attorney General's Office.

- c. Callers claimed to need the consumers' checking account numbers in order to process the alleged refunds of fraudulent charges. In some cases, callers said the recovered funds would be deposited into the consumer's account; in others, the caller said that Telguard would withdraw the fee from the consumer's account and then deposit the recovered amount. In a few cases Telguard callers told consumers to pull out a blank check, write void across it, and then read the bottom numbers to the caller.
- d. Defendants' callers obtained account numbers from some Missouri consumers, and funds were withdrawn by Defendants, under the name of Telenetwork. Consumers did not receive the promised refund of fraudulent charges.
- e. Other than claiming to be working with the Attorney General's Office, Defendants' callers do not explain how they are allegedly able to obtain information about consumers' financial accounts and do not inform consumers that they are not affiliated with a government entity or a collection agency. They also do not explain how they are able to recover the alleged unauthorized charges.

18. Defendants engaged in the following practices when Telguard callers contact Missouri consumers and market the alleged credit card and checking account protection program, as well as protection for other private information:

- a. The caller claimed the consumer needs protection for his or her credit card, because the consumer's credit card information is available to others, and offered to provide the consumer "security" for a fee. Fees quoted were \$379.
- b. The caller does not explain how Defendants can protect the consumer's credit card from unauthorized charges.
- c. Telguard callers also told consumers that their names and social security numbers were in Telguard's computer system, on the internet, or on lists given to telemarketers, and that Telguard could remove the consumer's personal information for a fee. One consumer was quoted a charge of \$586, and another was offered this service for \$239.
- d. Consumers are not told how Defendants obtained consumers' personal information or how Defendants can remove the information from the internet or from telemarketer lists.

19. Defendants have also represented to consumers that for a fee of \$239, Defendants would stop telemarketing calls and "junk" mailings to the consumer, and additionally, give the consumer \$500. Defendants do not inform consumers how they are able to stop telemarketing calls and unsolicited mail advertisements to consumers, and they do not inform consumers that Telguard is not affiliated with law enforcement or any government agency.



20. Defendants provide consumers with the telephone number of 866-273-7227 as the contact telephone number for Telguard. When consumers have called this number, no one answers the line. This telephone number belongs to AXS.

21. Consumers are also given the address of 1320 Route 9, Champlain, New York 12919 as Telguard's address. The address is that of Freeport Forwarding, a mailing warehouse; and AXS, under the names of Telguard, Phoneguard, Teleguard, and Telenetwork, receives and mails correspondence and packages through this address.

22. Oren Pinto regularly travels from Canada to Freeport Forwarding to retrieve mail and prepare outgoing packages from Telguard.

23. Defendants represent that they are working with the Attorney General's Office and are able to prevent telemarketers and other solicitors from contacting consumers, that they are able to protect consumers from unauthorized credit card charges, that they can prevent the dissemination of consumers' private information, and that consumers have incurred fraudulent charges and that Defendants can recover unauthorized losses.

24. Defendants omit the material facts they are not affiliated with any credit card company, collection agency, financial institution, government consumer protection agency, or other law enforcement agency.

### **COUNT I**

25. Plaintiff incorporates by reference paragraphs 1 through 24, above, as if fully set forth herein.

26. The above-described activities constitute the marketing, offering, advertisement, promotion and/or sale of merchandise, to wit: alleged protection for consumers' credits cards, checking accounts, and other personal information; stopping telemarketing calls and "junk" mailings to consumers; and recovering alleged fraudulent charges to credit cards or checking accounts, in trade or commerce in or from the State of Missouri pursuant to §§ 407.010 and 407.020.1, RSMo 2000.

27. Before, during, after and in connection with the marketing, offering, advertising and/or selling of such product, the Defendants have themselves or through their agents acting within the course and scope of their agency engaged in deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material facts, all declared to be unlawful under §407.020, RSMo 2000, including but not limited to:

- a. misrepresenting, directly or by implication, to Missouri consumers that Defendants are able to protect consumers from unauthorized charges on the consumers' credit cards or checking accounts;
- b. misrepresenting, directly or by implication, to Missouri consumers that Defendants are able to prevent others from accessing consumers' credit card numbers and other private information;
- c. misrepresenting, directly or by implication, to Missouri consumers that Defendants are able to prevent telemarketers and other marketing entities from contacting or soliciting consumers;

- d. misrepresenting, directly or by implication, to Missouri consumers that the consumers have incurred fraudulent charges to their credit cards or checking accounts and that Defendants are able to obtain refunds of these charges for consumers;
- e. misrepresenting, directly or by implication, to Missouri consumers that Defendants are working with the Attorney General's Office;
- f. omitting the material fact that Defendants are not affiliated with the consumers' credit card companies or financial institutions;
- g. omitting the material fact that Defendants are not affiliated with a legitimate collection agency;
- g. omitting the material fact that Defendants are not affiliated with law enforcement;
- g. omitting the material fact that Defendants are not affiliated with any government consumer protection agency or the Attorney General's Office.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Attorney General prays that this Court:

A. Enter a judgment declaring that Defendants have violated § 407.020, RSMo 2000, as aforesaid;

B. Enter a permanent injunction, pursuant to § 407.100.1, RSMo, 2000, enjoining Defendants, their officers, directors, parent corporations, subsidiaries, d/b/a's, agents, employees, representatives, attorneys, assigns, and all those acting in concert with them or

for them or on their behalf in whatever capacity, and having actual notice of such injunctions, from engaging in the unlawful conduct alleged in paragraphs 15 through 24;

D. Award civil penalties of \$1,000 per violation of the Missouri Merchandising Practices Act;

E. Order Defendants to pay restitution to Missouri consumers who have incurred losses as a result of Defendants' unlawful conduct;

E. Assess to Defendant all Court costs and costs of investigation and prosecution incurred by Plaintiff, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFF

**VERIFICATION**

I, \_\_\_\_\_, being first duly sworn upon my oath, do hereby state that the above and foregoing allegations of fact are true and correct, to the best of my knowledge and belief.

\_\_\_\_\_

Subscribed and sworn to before me, a Notary Public, this \_\_th day of October, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_